

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Court
Southern District of Texas
FILED

MAY 19 2003

Michael N. Milby, Clerk

In re ENRON CORPORATION SECURITIES
LITIGATION

Civil Action No. H-01-3624
(Consolidated)

CLASS ACTION

This Document Relates To:

MARK NEWBY, et al., Individually and On
Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

ENRON CORP., et al.,

Defendants.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, et al., Individually and On
Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

KENNETH L. LAY, et al.,

Defendants.

**LEAD PLAINTIFF'S RESPONSE TO DEFENDANT CANADIAN
IMPERIAL BANK OF COMMERCE'S STATEMENT
OF UNDISPUTED MATERIAL FACTS IN SUPPORT
OF ITS MOTION FOR SUMMARY JUDGMENT**

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I. INTRODUCTION

Lead Plaintiff submits this Response to CIBC's Statement of Undisputed Material Facts in Opposition to CIBC's Motion for Summary Judgment. In Lead Plaintiff's opposition to CIBC's summary judgment motion and request for continuance pursuant to Rule 56(f) to conduct discovery, Lead Plaintiff has demonstrated CIBC is a proper party based on its own actions, the actions of its controlled subsidiaries, and as a controlling person under the Securities Exchange Act of 1934 and the Securities Act of 1933. Coming mere days after the discovery stay was lifted in this action, CIBC's Statement of Undisputed Material Facts does not demonstrate the absence of any genuine issue justifying dismissal and the facts it asserts are subject to contradictory inferences individually and as a whole. In addition, Lead Plaintiff has yet to test the personal knowledge of those who aver to the facts stated by CIBC. Indeed, it cannot be determined from the averments of CIBC's affiants whether they have any relevant personal knowledge beyond their simple statements identifying the name of each CIBC entity that conducted the transactions underlying Lead Plaintiff's claims. The following chart recounts CIBC's characterization of the Consolidated Complaint's allegations, CIBC's claimed "Undisputed Facts" and Lead Plaintiff's response:

Allegation in Complaint CIBC and/or its top executives invested in LJM2. Complaint, ¶¶29, 64, 461, 646, 731-32.	CIBC's "Undisputed" Facts Upon the formation of LJM2, CIBC Capital Corporation (not CIBC) became a limited partner. Tab 2 hereto (Aff. of Lucia Martinez), at ¶32. <i>See also id.</i> ¶13. Lead Plaintiff's Response This "undisputed fact" does not demonstrate the absence of a genuine issue justifying dismissal and it is subject to contradictory inferences. It does not address the allegations that CIBC and/or its top executives invested in LJM2 because it does not assert how or why CIBC Capital Corp. became a limited partner in LJM2. A reasonable jury could infer that CIBC Capital Corp. invested in LJM2 on behalf or for the benefit of CIBC and/or its top executives because CIBC Capital Corp. is nothing more than a CIBC entity. A reasonable jury could also infer this demonstrates CIBC's participation in the scheme. Lead Plaintiff has not had an opportunity to depose Lucia Martinez to determine if she has relevant personal
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	<p>knowledge beyond the identity of the CIBC entity that was a limited partner in LJM2, nor has Lead Plaintiff had the opportunity to discover further evidence demonstrating CIBC's participation in the scheme. Lead Plaintiff seeks discovery regarding those who invested in LJM2 and their relationship to CIBC. <i>See</i> Interrogatory No. 6 regarding investment in LJM Partnerships. <i>See</i> for example, Document Request No. 71 (documents concerning investment in Enron, SPEs, Trusts or LJM Partnerships).</p>
<p>Allegation in Complaint CIBC issued analyst reports re: Enron. Complaint, ¶¶29, 113, 120, 132, 148, 161, 176, 183, 194, 199, 207, 230, 251, 269, 323, 334, 349, 372, 715, 724.</p>	<p>CIBC's "Undisputed" Facts CIBC World Markets Corporation (not CIBC) issued research reports re: Enron. Tab 2 at ¶¶7, 22.</p> <p>Lead Plaintiff's Response This "undisputed fact" does not demonstrate the absence of a genuine issue justifying dismissal and it is subject to contradictory inferences. It does not address the allegations that CIBC issued analyst reports regarding Enron or did not have an effective "chinese wall" in place. A reasonable jury could infer that CIBC World Markets Corp. issued research reports for the benefit of and/or under the control of CIBC because that entity is owned and controlled by CIBC. A reasonable jury could also infer this demonstrates CIBC's participation in the scheme. Lead Plaintiff has not had an opportunity to discover further evidence concerning CIBC's participation in the scheme, ownership and control of CIBC World Markets Corp., and the absence of an effective "chinese wall" at CIBC World Markets Corp.</p>
<p>Allegation in Complaint CIBC did the New Power IPO, created Hawaii 125-0, made loans to Hawaii 125-0 and received a total return swap guarantee. Complaint, ¶¶42, 487, 721, 731, 893.</p>	<p>CIBC's "Undisputed" Facts CIBC World Markets Corporation (not CIBC) was an underwriter in the 10/00 NewPower IPO. Tab 2 at ¶¶8, 23. CIBC Inc. (not CIBC) held equity certificates in the Hawaii 125-0 Trust (now known as Hawaii II 125-0 Trust) and the Hawaii I 125-0 Trust. <i>Id.</i> ¶16, 35. CIBC (and other banks) made loans to those Trusts. <i>Id.</i> at ¶5.</p> <p>Lead Plaintiff's Response These "undisputed facts" do not demonstrate the absence of a genuine issue justifying dismissal and are subject to contradictory inferences. They do not adequately address</p>

	<p>the allegations that CIBC participated in the Enron fraud. For example, they do not adequately address the involvement of CIBC and CIBC Inc. in the "Hawaii 125-0" and "Braveheart" sham transactions, and do not address at all the total return-swap guarantee. A reasonable jury could infer that CIBC World Markets Corp. underwrote the New Power IPO for the benefit of and/or under the control of CIBC because that entity is owned and controlled by CIBC. A reasonable jury could infer that CIBC Inc. owned and controlled "Hawaii 125-0" entities for the benefit of and/or under the control of CIBC because CIBC Inc. is owned and controlled by CIBC. A reasonable jury could also infer these "undisputed facts," and CIBC's loans in connection with "Hawaii 125-0" and "Braveheart," separately, or in addition to the aforementioned "undisputed facts" demonstrates CIBC's participation in the scheme. Lead Plaintiff has not had an opportunity to discover evidence further demonstrating CIBC's participation in the fraud, including the "Hawaii 125-0" and "Braveheart" sham transactions. <i>See</i> for example, Interrogatory Nos. 1-4 regarding business relationships with, transactions among and services provided by CIBC and Enron. <i>See</i> Document Request No. 34 (documents concerning any business relationship between CIBC and Enron, any SPE or any Trust) and Request No. 36 (documents concerning transactions CIBC executed with Enron).</p>
<p>Allegation in Complaint CIBC underwrote 5/98 \$35MM Enron common stock offering. Complaint, ¶¶48, 1006.</p>	<p>CIBC's "Undisputed" Facts CIBC Oppenheimer Corp. (not CIBC) was the underwriter in a 5/98 offer to sell \$15 MM of Enron common stock. Tab 2 at ¶¶17, 26.</p> <p>Lead Plaintiff's Response These "undisputed facts" do not demonstrate the absence of a genuine issue justifying dismissal and are subject to contradictory inferences. They do not adequately address the allegations that CIBC participated in the scheme or otherwise violated securities laws. A reasonable jury could infer that CIBC Oppenheimer Corp. underwrote Enron's common stock offering for the benefit of and/or under the control of CIBC because that entity is owned and controlled by CIBC. A reasonable jury could also infer these</p>

	<p>"undisputed facts" demonstrate CIBC's participation in the scheme or violation of securities laws. Lead Plaintiff has not had an opportunity to discover further evidence concerning CIBC's participation in the scheme, ownership and control of CIBC Oppenheimer Corp., and the offerings underwritten by CIBC's subsidiaries.</p>
<p>Allegation in Complaint CIBC underwrote 5/19/99 \$500MM 7.375% Note offering. Complaint, ¶¶48, 151, 723.</p>	<p>CIBC's "Undisputed" Facts CIBC World Markets Corp. (not CIBC) was the underwriter. Tab 2 at ¶¶9, 24.</p> <p>Lead Plaintiff's Response These "undisputed facts" do not demonstrate the absence of a genuine issue justifying dismissal and are subject to contradictory inferences. They do not adequately address the allegations that CIBC participated in the scheme or otherwise violated securities laws. A reasonable jury could infer that CIBC World Markets Corp. underwrote Enron's \$500 MM 7.375% Note offering for the benefit of and/or under the control of CIBC because that entity is owned and controlled by CIBC. A reasonable jury could also infer these "undisputed facts" demonstrate CIBC's participation in the scheme or other violation of securities laws. Lead Plaintiff has not had an opportunity to discover further evidence concerning CIBC's participation in the scheme, ownership and control of CIBC World Markets Corp., and the offerings underwritten by CIBC's subsidiaries.</p>
<p>Allegation in Complaint CIBC participated in the 7/01 6.31% and 6.19% offerings, respectively, of Marlin Water Trust II and Marlin Water Capital Corp. II. Complaint, ¶¶49, 720.</p>	<p>CIBC's "Undisputed" Facts CIBC World Markets Corp. (not CIBC) was an initial purchaser in the 6.31% offering of Marlin Water Trust II and Marlin Water Capital Corp. II Notes. Tab 2 at ¶¶10, 25. CIBC World Markets plc (not CIBC) was an initial purchaser in the 6.19% offering of Marlin Water Trust II and Marlin Water Capital Corp. II Notes. <i>Id.</i> ¶29. CIBC was not an underwriter in either offering. <i>Id.</i> ¶6.</p> <p>Lead Plaintiff's Response These "undisputed facts" do not demonstrate the absence of a genuine issue justifying dismissal and are subject to contradictory inferences. They do not adequately address the allegations that CIBC participated in the scheme or otherwise violated securities laws. A reasonable jury could infer that CIBC World Markets Corp. and CIBC World</p>

	<p>Markets plc participated in the Marlin offerings for the benefit of and/or under the control of CIBC because those entities are owned and controlled by CIBC. A reasonable jury could also infer these "undisputed facts" demonstrate CIBC's participation in the scheme. Lead Plaintiff has not had an opportunity to discover further evidence concerning CIBC's participation in the scheme, ownership and control of CIBC World Markets Corp. or CIBC World Markets plc, and the offerings underwritten by CIBC's subsidiaries.</p>
<p>Allegation in Complaint CIBC underwrote 10/00 New Power offering. Complaint, ¶¶49 and 720.</p>	<p>CIBC's "Undisputed" Facts CIBC World Market Corp. was the underwriter (not CIBC). Tab 2 at ¶8, 23.</p> <p>Lead Plaintiff's Response These "undisputed facts" do not demonstrate the absence of a genuine issue justifying dismissal and are subject to contradictory inferences. They do not adequately address the allegations that CIBC participated in the scheme or otherwise violated securities laws. A reasonable jury could infer that CIBC World Markets Corp. underwrote Enron's New Power IPO for the benefit of and/or under the control of CIBC because that entity is owned and controlled by CIBC. A reasonable jury could also infer these "undisputed facts" demonstrate CIBC's participation in the scheme or other violation of securities laws. Lead Plaintiff has not had an opportunity to discover further evidence concerning CIBC's participation in the scheme, ownership and control of CIBC World Markets Corp., and the offerings underwritten by CIBC's subsidiaries.</p>
<p>Allegation in Complaint CIBC loaned \$115.2MM to Braveheart (EBS Content Systems LLC) re: Blockbuster. Complaint, ¶¶522, 727-28.</p>	<p>CIBC's "Undisputed" Facts CIBC did not loan any money to "Braveheart" or EBS Content Systems LLC; CIBC and other banks made loans to the aforementioned Hawaii Trusts. Tab 2 at ¶¶20, 5. CIBC Inc. held equity certificates in those Trusts. <i>Id.</i> ¶35.</p> <p>Lead Plaintiff's Response These "undisputed facts" do not demonstrate the absence of a genuine issue justifying dismissal and are subject to contradictory inferences. They do not adequately address the allegations that CIBC participated in the Enron fraud. For example, they do not</p>

	<p>adequately address the involvement of CIBC and CIBC Inc. in the "Hawaii 125-0" and "Braveheart" sham transactions, the known purpose of CIBC's and CIBC Inc.'s transactions with the "Hawaii 125-0" trusts, and do not address at all the total return-swap guarantee. A reasonable jury could infer that CIBC Inc. owned and controlled "Hawaii 125-0" entities for the benefit of and/or under the control of CIBC because CIBC Inc. is owned and controlled by CIBC. A reasonable jury could also infer these "undisputed facts," and CIBC's loans in connection with "Hawaii 125-0" and "Braveheart" (<i>see</i> SUF at 3) separately, or in addition to the aforementioned "undisputed facts" demonstrates CIBC's participation in the scheme. Lead Plaintiff has not had an opportunity to depose Lucia Martinez to determine if she has relevant personal knowledge beyond the identity of the "Hawaii 125-0" trusts with which CIBC transacted or the identity of the CIBC entity that owned "Hawaii 125-0" entities. Lead Plaintiff also has not had an opportunity to discover evidence further demonstrating CIBC's participation in the fraud, including the "Hawaii 125-0" and "Braveheart" sham transactions. <i>See</i> for example Document Request No. 34 (documents concerning any business relationship between CIBC and Enron, any SPE or any Trust); Request No. 36 (documents concerning transactions CIBC executed with Enron); Interrogatory Nos. 1-4 regarding business relationships and transactions between CIBC and Enron, SPEs or Trusts.</p>
<p>Allegation in Complaint CIBC underwrote 11/93, 7/94, 1/97 offerings. Complaint, ¶718.</p>	<p>CIBC's "Undisputed" Facts These three transactions involved Oppenheimer & Co., Inc. (not CIBC). Tab 2 at ¶¶19, 28. In November 1997, CIBC Wood Gundy Securities Corp. acquired Oppenheimer Holdings, Inc. which was the sole shareholder of Oppenheimer & Co., Inc. Tab 3 (Affidavit of Patricia Bourdon) at ¶3. Thereafter, CIBC Wood Gundy Securities Corp., Oppenheimer Holdings, Inc. and Oppenheimer & Co., Inc. were merged into CIBC Oppenheimer Corp. <i>Id.</i></p> <p>Lead Plaintiff's Response CIBC Oppenheimer Corp., a successor of CIBC Wood Gundy and a named defendant in the First Amended Consolidated Complaint</p>

	<p>and referenced in the Consolidated Complaint as "CIBC" underwrote offerings in 1993, 1994 and January 1997. Lead Plaintiff has not had an opportunity to depose Patricia Bourdon to determine if she has relevant personal knowledge beyond the identity of certain CIBC entities that performed underwritings for Enron. Lead Plaintiff has not had an opportunity to discover further evidence concerning CIBC's participation in the scheme, ownership and control of CIBC Oppenheimer Corp., and the offerings underwritten by CIBC's subsidiaries.</p>
<p>Allegation in Complaint CIBC underwrote Enron transactions in 5/98, 2/99, and 5/99. Complaint, ¶718.</p>	<p>CIBC's Undisputed Facts CIBC Oppenheimer Corp. (not CIBC) underwrote the 5/98 and 2/99 transactions. Tab 2 at ¶¶26-27. CIBC World Markets Corp. (not CIBC) underwrote the 5/99 transaction. <i>Id.</i> at ¶24. <i>See also id.</i> ¶¶9, 17, 18.</p> <p>Lead Plaintiff's Response These "undisputed facts" do not demonstrate the absence of a genuine issue justifying dismissal and are subject to contradictory inferences. They do not adequately address the allegations that CIBC participated in the scheme or otherwise violated securities laws. A reasonable jury could infer that CIBC Oppenheimer Corp. underwrote Enron's 5/98 and 2/99 offerings for the benefit of and/or under the control of CIBC because that entity is owned and controlled by CIBC. A reasonable jury could infer that CIBC World Markets Corp. underwrote Enron's 5/99 transaction for the benefit of and/or under the control of CIBC because that entity is owned and controlled by CIBC. A reasonable jury could also infer these "undisputed facts" demonstrate CIBC's participation in the scheme or other violation of securities laws. Lead Plaintiff has not had an opportunity to discover further evidence concerning CIBC's participation in the scheme, ownership and control of CIBC Oppenheimer Corp. and CIBC World Markets Corp., and the offerings underwritten by CIBC's subsidiaries.</p>
<p>Allegation in Complaint CIBC was a principal lender to Enron in transactions that occurred in 11/97, 7/98, 9/98, and 8/01. Complaint, ¶719.</p>	<p>CIBC's "Undisputed" Facts CIBC Wood Gundy plc (not CIBC) was a lender in 11/97 and 11/98 (not 7/98) transactions. Tab 2 at ¶¶11-12, 30-31. CIBC Inc. (not CIBC) was a lender in an 8/98 (not 9/98) transaction and, as of 8/01, in two</p>

additional transactions. *Id.* ¶¶14-15, 33-34.

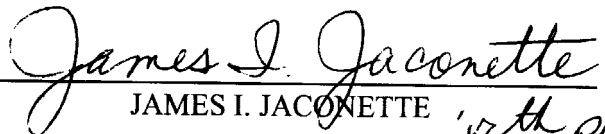
Lead Plaintiff's Response:

These "undisputed facts" do not demonstrate the absence of a genuine issue justifying dismissal and are subject to contradictory inferences. They do not adequately address the allegations that CIBC participated in the scheme. A reasonable jury could infer that CIBC Wood Gundy plc transacted with Enron for the benefit of and/or under the control of CIBC because that entity is owned and controlled by CIBC. A reasonable jury could infer that CIBC Inc. transacted with Enron for the benefit of and/or under the control of CIBC because that entity is owned and controlled by CIBC. A reasonable jury could also infer these "undisputed facts" demonstrate CIBC's participation in the scheme. Lead Plaintiff has not had an opportunity to depose David Austin or Bruce Renihan to determine if they have relevant personal knowledge beyond the identity of certain of CIBC's entities. Lead Plaintiff also has not had an opportunity to discover further evidence concerning CIBC's participation in the scheme, ownership and control of CIBC Wood Gundy plc and CIBC Inc., and the Enron transactions undertaken by CIBC's subsidiaries.

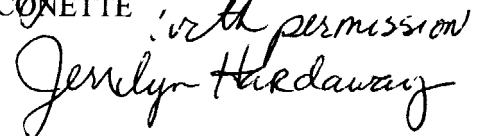
DATED: May 19, 2003

Respectfully submitted,

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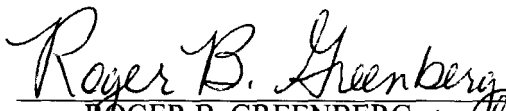
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing LEAD PLAINTIFF'S RESPONSE TO DEFENDANT CANADIAN IMPERIAL BANK OF COMMERCE'S STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT has been served by sending a copy via electronic mail to serve@ESL3624.com on this 19th day of May, 2003.

I further certify that a copy of the foregoing LEAD PLAINTIFF'S RESPONSE TO DEFENDANT CANADIAN IMPERIAL BANK OF COMMERCE'S STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT has been served via overnight mail on the following parties, who do not accept service by electronic mail on this 19th day of May, 2003.

Carolyn S. Schwartz
United States Trustee, Region 2
33 Whitehall Street, 21st Floor
New York, NY 10004



Mo Maloney